SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11531-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ALAN GEORGE HUTSON First Respondent

RACHEL MARY HUTSON Second Respondent

Before:

Mr J. P. Davies (in the chair)
Mr R. Nicholas
Dr P. Iyer

Date of Hearing: 7 and 8 February 2017

Appearances

Robin Havard, solicitor of Blake Morgan LLP, One Central Square, Cardiff, CF10 1FS for the Applicant.

The First Respondent appeared for the First and Second Respondents. The Second Respondent did not attend.

JUDGMENT

Allegations

1. The allegations against the First Respondent and/or the Second Respondent made by the Solicitors Regulation Authority ("SRA") were that having been employed or remunerated by solicitors, but not being solicitors, they had, in the opinion of the SRA, occasioned or been party to, with or without the connivance of the solicitor by whom they were employed or remunerated, acts or defaults in relation to legal practices which involved conduct on the part of the First Respondent and/or the Second Respondent of such a nature that, in the opinion of the SRA, it would be undesirable for the First Respondent and/or the Second Respondent to be involved in a legal practice in one or more of the ways mention in Section 43(1)(A) of the Solicitors Act 1974 as amended, in that:

In relation to Rohrer & Co Solicitors ("Rohrer"):

1.1 The First Respondent participated in and/or facilitated the misuse of funds received by Rohrer from the Axiom Legal Financing Fund ("Axiom");

1.2 The First Respondent improperly made and/or facilitated payments from Rohrer which were paid to the Respondents, whether to themselves directly or to companies they owned or controlled;

1.3 The First Respondent exerted an inappropriate level of control over the activities of the firm;

1.4 The Second Respondent participated in and/or facilitated the misuse of funds received by Rohrer from Axiom;

1.5 The Second Respondent improperly made and/or facilitated payments from the firm which were paid to the Respondents whether to themselves directly or to companies they owned or controlled;

1.6 The Second Respondent exerted an inappropriate level of control over the activities of the firm;

In relation to Mulberry Finch Limited ("MFL"):

1.7 The First Respondent exerted an inappropriate level of control over the activities of the firm;

1.8 The Second Respondent exerted an inappropriate level of control over the activities of the firm;

As regards the First Respondent only:

1.9 The First Respondent attempted to mislead the SRA by falsely preparing and sending invoices to a third party. In doing so he attempted to disguise the true nature and/or purpose of a loan advance.

2. Dishonesty was alleged in relation to allegations 1.1, 1.2, 1.4 and 1.5 against both Respondents and in relation to allegation 1.9 against the First Respondent only. Further or alternatively, it was alleged that the Respondents had acted recklessly. Proof of dishonesty and/or recklessness was not an essential ingredient for proof of the allegations.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included:

- Notice of Application dated 1 July 2016
- Rule 8 Statement and Exhibit MRH1 dated 1 July 2016
- Applicant's Schedule of Costs (undated)
- Answer of the First and Second Respondents dated 3 August 2016
- Testimonials on behalf of the Respondents'

Factual Background

4. The First Respondent was born in October 1955; the Second Respondent was born in April 1956; the Respondents are married. Both Respondents were unadmitted.

Allegations 1.1 – 1.6

Rohrer

5. On 26 June 2013, an Investigation Officer from the SRA, Dr David Rowson, attended Rohrer's offices, without notice, to carry out an inspection and investigation into the firm's activities. He prepared an Interim Forensic Investigation Report dated 11 February 2013. On 13 June 2013, Ms Alice Evans, an Investigation Officer from the SRA and Mr Stephen Wallbank, Investigation Team Manager (together the "FIO's"), interviewed Mr Christopher Hale. The Respondents were asked to attend an interview to discuss matters arising from the SRA's investigation. The First Respondent declined to be interviewed and instead requested that questions be emailed to him. The Second Respondent did not respond to the SRA's request[1]. At the conclusion of the investigation the FIOs produced a Final Forensic Investigation Report dated 26 June 2013.

6. The firm was originally formed as a branch office of Emmetts Solicitors Limited (subsequently renamed Ashton Fox Solicitors Limited) ("Ashton Fox") and incorporated as Legal Direct Limited on 2 January 2007. The firm became independent of Emmetts and changed its name to Bracewell Law Limited on 13 April 2011. On 4 December 2012 Bracewell changed its name to Rohrer & Co.

5. When the firm was a branch office of Emmetts it was owned by Mr Timothy Schools ("TS") and Mr Richard David Emmett ("RE") who were also directors until their resignations on 14 August 2011 and 1 January 2012 respectively. As regards the change of name to Rohrer & Co, Mr Hale confirmed that the name 'Rohrer' was

[1] The Second Respondent explained that she did not receive an interview request as the email was sent to an incorrect email address.

chosen as it was, "apparently an old family name in [the Second Respondent]'s family".

6. Mr Hale (a former solicitor) was admitted to the Roll in November 2000. He joined the firm on 29 September 2010 on a temporary basis, having been unemployed since February 2010. At that time he confirmed that his understanding was that the Second Respondent, "was effectively running the London Office". He was offered a permanent contract by the Respondents, "after a month of working".

7. Mr Hale explained that the Respondents and RE later suggested that he become a director, which he did on or around 30 September 2011. On 1 January 2012 RE and TS transferred the entire share capital of the firm to Mr Hale, making him the sole director and shareholder of the firm.

8. Mr Hale stated, during the course of the SRA's investigation, that decisions at the firm were made by the management team comprised of himself, Clare Fieldhouse (Compliance Manager and Legal Executive), Sandra Pasotti (Senior Solicitor) and the Respondents. However in a later letter to the SRA dated 7 September 2014 he indicated, inter alia, that he:

   - considered he, "was very much an employee and [the Respondents] maintained an image that they were effectively owners of the firm. They maintained control over all recruitment and all financial decisions";
   - "didn't have the experience to carry out this role [of a director] effectively" and was "manifestly unsuited" to the role;
   - "had no input into how the firm was run" and was "denied access to information and only updated when it was in [the Respondents'] interests";
   - was not provided with, "the information needed to make a clear assessment of what was going on in the firm";
   - was rarely consulted prior to decisions being made;
   - "was never provided with any financial information" about the firm; and
   - was "completely unsuited" to his management role.

9. The Second Respondent and Mr Hale were the signatories on the firm's accounts at the time of Dr Rowson's attendance. Whilst Mr Hale indicated at interview on 13 June 2013 that he had been made sole signatory on the accounts, no mandate was ever provided to show the updated signatories.

10. At the time of Dr Rowson's attendance the firm was also in the process of applying to become an ABS at which point it was intended that the Second Respondent would become a director and acquire 40% of the share capital.

11. At interview on 13 June 2013 Mr Hale indicated that the intention had been for the Second Respondent to purchase a percentage of the shareholding (between 25-40%) and to, "come in as a kind of co-owner and for her to take a stake in the business and then to look for a kind of outside investment in terms of potential other funds". Mr Hale suggested that it was the Second Respondent who explained to him that, "the firm would be applying to become an ABS taking advantage of the changes introduced by the Legal Services Act" and that, "the firm had big expansion plans". That application was subsequently withdrawn.

12. The firm later started negotiations with MFL regarding a potential merger. On 22 May 2013, a Notice of Intention to enter administration was filed on behalf of the firm. On 30 May 2013 Mr Hale notified the SRA that a firm of solicitors named Lorrells LLP ("Lorrells") was intending to purchase Rohrer by way of a 'pre-pack' following administration. The First Respondent was heavily involved in the relevant negotiations however neither transaction ultimately took place.

13. The SRA subsequently intervened into Rohrer and MFL on 3 July 2013.

The Axiom Fund

14. Axiom was established to provide litigation funding for claims in England and Wales. TS owned or controlled the Synergy Solution Ltd ("SSL") and Tangerine Investment Management Limited ("Tangerine"). SSL, was succeeded by Tangerine, as the Investment Manager for the Fund. The Fund failed and went into receivership in February 2013.

15. Grant Thornton, the receivers of the Axiom Fund, sued various individuals for sums in excess of £100 million. The Respondents were two of the Defendants in that claim. The claim alleged that they "conspired ... by unlawful means involving the wrongful transfer out of the [Axiom Fund] of monies totalling £110 million purportedly by way of qualifying loans to various UK-based Panel Law Firms" and that "a substantial portion [of Axiom monies] was retained or received by the Defendants for their own benefit. Insofar as any funds reached the Panel Law Firms, a substantial sum was transferred to Panel Law Firms owned or controlled by one or other of the Individual Defendants and/or the Panel Law Firms may not have passed due diligence and/or the monies borrowed were not used for the purposes for which they were lent and/or were employed in cases which did not meet the criteria laid down in the loan documentation." Whilst Grant Thornton alleged that the Respondents acted fraudulently, the Applicant did not seek to establish fraud or other serious wrongdoing for the purposes of these proceedings. Grant Thornton's case against the Respondents was confidentially settled.

Timothy Schools ("TS")

16. TS was the Axiom Fund's Investment Manager, and owned and was the Director of SSL and Tangerine. Synergy (IOM) Ltd was the Loan Manager and was also owned by TS. From August 2012 onwards, articles appeared on an internet site called "Offshore Alert" and other websites accusing TS of fraud and alleging that the Axiom Fund was a fraudulent scheme.

17. TS was a defendant to the Receivers' claim; that case settled on confidential terms.

18. TS was also struck off by the Solicitors Disciplinary Tribunal after a number of serious allegations were found proved against him, including failing to act with integrity. Certain of the allegations related to the involvement of and interest held by TS in other organisations involved in litigation conducted by his firm (ATM Solicitors), including Synergy IOM and SSL. These gave rise to a conflict of interest. The allegations also concerned the extent to which non-solicitor third parties were able to exercise an inappropriate level of control and influence over the activities of ATM Solicitors.

The Respondents' relationship with the Axiom Fund

19. It was accepted that the Respondents were on friendly terms with TS and that it was TS who assisted them in their desire to become involved in the legal sector.

20. A document produced by SSL described as 'Due Diligence Response Axiom Legal Financing Fund' described the Second Respondent as one of two, "senior managers", and set out a summary biography for the Second Respondent. The introduction to the document stated that it was intended to, "present [Synergy's] response to requests for due diligence information in respect of the [Axiom Fund]".

21. During the course of his interview on 13 June 2013, in response to a question about the Second Respondent's involvement with Synergy, Mr Hale stated that his understanding was that she was employed only as an unpaid consultant: "she was an unpaid consultant for Synergy in their early days and it wasn't that active but was involved in meetings when they were developing the [Axiom Fund] and setting that out as a model". He claimed not to have been aware of her being involved at the relevant time and only learned that she was involved after discussions regarding a detailed assessment of costs in a case funded by the Axiom Fund. He also understood that she was, "speaking to Mayer Brown about developing a funding agreement that could be used by the Axiom Fund... as a template".

22. The Second Respondent accepted, (in her defence against the Axiom claim), that she carried out, "a limited amount of unpaid consultancy work". As regards the fact of her name "appearing in lists of Investment Manager personnel in four documents", she alleged that they were inaccurate. However, she accepted that she had had sight of at least some of these documents at the time of their publication and, "did not object to the inclusion of her name".

Activities of Rohrer & Co

23. As at 31 January 2013 the open client matters at the firm were:

RTB	2,919
Mis-Sold Mortgages	430
VWF Miners (Professional Negligence)	3
General Litigation	63
Interest Rate Swaps	31
Other Commercial Litigation	7

with funding being received from the Axiom Fund, net of facilitation fees, in order to facilitate cases in the first 3 categories in the initial amount of £1,800.00 per file.

24. The Respondents were at all material times part of the management team at the firm, and were both involved with the firm before Mr Hale joined. The First Respondent was described as the Operations Manager for the firm, and, from January 2013, he also acted as the firm's COFA. Mr Hale described the First Respondent as a consultant at the firm.

25. The Second Respondent was described as the Business Development Manager. She was authorised to operate the firm's bank accounts. Mr Hale confirmed that her involvement with the firm ceased in March 2013, purportedly as a result of cost cutting exercises.

26. The First Respondent, in his defence to the Axiom claim, asserted that his "involvement in the management of Rohrer & co was less substantial than that of [the Second Respondent], and was largely confined to working on IT and operational issues".

27. The FIOs asked Mr Hale about the involvement of the Respondents in the management of the firm. He confirmed that he, "had been on a management team with them since becoming a director", and in response to a question regarding what Mr Hale knew about what they did beforehand, he indicated:

> "Well, I know they ran a hotel in France. I know that [the First Respondent] was involved in IT and I know that [the Second Respondent] ran a kind of firm that worked for [GR] and ran a firm that got sold to, which was involved some hedge fund type management, I don't really know." (sic)

28. Mr Hale described the Respondents' roles as follows:

> "Well [the First Respondent] was the operations manager so he was dealing with just day to day IT and HR issues so that they didn't come into Claire Fieldhouse's remit and then [the Second Respondent] a kind of business development on the management side. And both, well [the First Respondent], involved in the finances and [the Second Respondent] involved in the funding structures I suppose."

29. The Respondents were employed by the firm as consultants and the firm paid them through a company named HUT Consulting Limited ("HUT").

Receipt of Monies from the Axiom Fund by Rohrer

30. The firm's relationship with the Axiom Fund was established when it was still a branch office of Emmetts in or around September 2010. It began to receive funds in July 2011 in accordance with a Panel Solicitor Services Agreement (the "PSSA") said to have been signed on behalf of the firm by TS. Pursuant to a Precedent Litigation Funding Agreement dated 2 May 2012 (the "LFA") signed by Mr Hale, the firm was entitled to obtain further funding of up to £30million from the Axiom Fund.

31. The first three advances from the Axiom Fund, totalling £423,600.00, were received by the firm in July 2011 before Mr Hale's appointment as a director.

32. At the time of Dr Rowson's attendance the firm's latest management accounts revealed that, as at 31 October 2012, it owed the Axiom Fund £13,555,826.00 and had net assets of £278,385.00. The indebtedness to the Axiom Fund was a capital debt of £11,787,675.00 and interest of £1,768,151.00. The debt included £3,974,100.00 in respect of fees that TS' companies took before monies originating from the Axiom Fund were sent to the firm. From the office account bank statements provided to the SRA, it could be seen that there were a total of 17 receipts from the Axiom Fund between July 2011 and August 2012, totalling £8,337,539.00.

33. By a letter dated 26 February 2013 to Rohrer from K&L Gates LLP on behalf of Grant Thornton, a formal demand was made for the sum of £12,953,500 plus interest. The letter detailed the ways in which it was alleged that the firm had breached the relevant funding agreements in place.

The Terms of the Funding Agreements

34. Funding from the Axiom Fund was received pursuant to the terms of agreements, including the LFA and, previously, the PSSA.

35. The PSSA and LFA contained various terms restricting and controlling the use of funds provided. The purpose of these terms was to reduce the risk that the firm would not repay the Axiom Fund and to protect the interests of the Axiom Fund and of the ultimate investors.

36. Clause 9.2(a) of the PSSA provided that:

> "The Panel solicitor will only authorise amounts derived from the Finance Facility ('Loan monies') to be used to pay authorised Fees and Expenses (as set out in the Fee table at Schedule 2) and that Loan Monies shall not be used for any other purpose".

37. In the definitions section of the PSSA, Fees and Expenses were defined as:

> "Fees and expenses approved by the Loan Manager that have been incurred by the Solicitor in connection with the legal action to recover a clients (sic) damages, including but not limited to audit fees, insurance premiums, Enquiry Agents fees, Agent sign-up fees, court Fees, and the finance fees, as set out in the fee table within the Solicitors Operations Manual".

38. Clause 2.2(a) of the LFA provided that:

> "The Panel Firm shall apply the proceeds of each Loan towards the payment of the Eligible Legal Expenses in relation to which the Loan was requested."

39. Clause 2.2(b) of the LFA provided that:

> "The Panel Firm may apply the proceeds of a Loan to fund the insurance premium relating to the Financial Guarantee Insurance".

40. In the definitions section of the LFA, 'Eligible Legal Expenses' meant:

> "the Legal Expenses relating to a Claim which is evidenced by an invoice, in form and substance the same as the form agreed in relation to that Claim prior to the first Utilisation in respect of that Claim;"

41. 'Legal Expenses' meant:

> "any sum payable in respect of Counsel's fees, expert's fees, Court fees, arbitration fees, the Legal Expenses Insurance or referral fees in relation to the Claimant's Claim or its Proceedings. … Such expenses shall not include any costs payable in respect of the Panel Firm's fees or any costs or expenses payable to one or more Opponents or to another party to the Proceedings;"

42. Further requirements of funding were stipulated as regards information/documentation to be sent to the investment manager (Synergy and, subsequently, Tangerine).

43. In terms of the agreements, Mr Hale confirmed during the course of the SRA's investigation that, "a lot of that was discussed between [the Second Respondent] and [TS] and representatives of Tangerine". In a letter to the SRA dated 7 September 2014 he indicated that:

- he "did not know the details or terms of the drawdown or the conditions of the loans that we (sic) being made to the firm";
- he was not, "provided with any of the contractual documents" and, "only saw copies of these much later when we were requested to provide them by the SRA. I requested them from the [Second Respondent] and she provided those documents";
- he "didn't properly understand the way the [Axiom Fund] worked";
- he "did not know the details of the individual draw-down requests that had been made, or the basis on which the loans were made" (sic);
- "In relation to the operation of the funding arrangement, this was all handled by [the Respondents] – [Mr Hale] had no involvement in the obtaining of funding and given that [the Respondents] had agreed the terms of the agreement [Mr Hale] assumed was being run according to the appropriate agreements" (sic);
- "When [Mr Hale] signed the PLFA … was told by [the Second Respondent] that we needed to sign it to continue the relationship with the funder. [The Second Respondent] indicated that it was a continuation of the previous agreement and the document needed to be signed … she indicated that she was happy to sign it";

- "[the Second Respondent] was the liaison with the fund";

- "The relationship with the [Axiom Fund] was handled by [the Respondents] …I was aware that the cases were being funded but was not aware of the particulars of the relationship, or the terms of the drawdown. All of these discussions were conducted by [the Respondents] and they discouraged [Mr Hale] from becoming involved in the funding side because this was a relationship that they had developed and it was their responsibility to liaise with them";

- "The processes and procedures as to the management of monies received via Synergy … were handled by the [Respondents]"; and

- "The funding arrangement was one that had been agreed between the fund and [the Second Respondent]".

The Facilitation Fee ("FF")

44. Pursuant to the PSSA, the Investment Manager would receive a payment of 50% of sums provided by the Axiom Fund Master to the Firm, as a so-called "Facilitation Fee". The FF would be distributed as follows:

- 20% for an audit (to a company called Checkmate);
- 20% for strategic advice (to the Investment Manager);
- 10% for insurance;
- 40% for operating the fund (to Synergy IOM); and
- 10% for commission.

45. Companies House documentation in relation to Checkmate showed that TS was the sole director of that company and the shares were held in his name and that of a 'C Schools'. Accordingly, at least 80% of the FF went to TS or to companies with which he was connected in circumstances where he was also previously a director and shareholder of the firm.

46. Similar provisions applied under the LFA. The difference was that the Axiom Fund paid the FF to Tangerine. The Axiom Fund paid the FF to Tangerine before paying the firm the money requested. The amount of the FF would be added to the debt due from the firm to Axiom.

47. Pursuant to Clause 9.5 of the PSSA, the firm was required to repay all loans and charges within 18 months of the loan advance. Pursuant to Clauses 1 and 6 of the LFA, the firm had to repay any advances received, including the FF, within 12 months of the date on which the relevant sum was advanced. None of the matters in relation to which funds had been received from Axiom were completed, and no funds were repaid by the firm to the Axiom Fund.

The Use of the Monies

48. Mr Hale stated that he was not involved in requesting the drawdown of monies from the Axiom Fund and that all requests for funding were made by the Respondents. Further, he "had no involvement in the obtaining of funding". The Respondents,

whilst denying excluding Mr Hale, accepted that they were involved in the drawdown of funds from the Axiom Fund.

First For Law Limited ("FFL")

49. The First Respondent was the sole director and shareholder of FFL. When asked about this company by the SRA on 30 April 2013, Mr Hale indicated that it was a claims management company (CMC) owned and operated by the First Respondent and it provided call centre support and also referrals on mis-sold mortgage claims.

50. The next day, in the presence of the First Respondent, the FIO was told by the First Respondent that FFL was in fact a company which provided an outsourced administration function to the firm.

51. At interview on 13 June 2013, in relation to the First Respondent's connection with FFL, Mr Hale stated:

> "...it's a company that was set up by [the First Respondent] so initially he brought in a ... I mean this was when we were in a place where effectively the law firm were in one room so all the solicitors and paralegals were on one side, and then there was a sort of client opening team in a different room and ... I think probably it just arose out of a need to concentrate more on that side of the business, so you had one side who were geared towards administration and I think obviously that came about as a suggestion from [the First Respondent], and he set the company up in that context."

52. The firm's bookkeeper and accountant were both said by Mr Hale to be employed by FFL and not the firm. However when it was put to Mr Hale at interview that the firm's bank statements showed direct payments to the accountant, he could not clarify the position stating: "Well, I don't know, I can easily find out the situation and give someone a call. He may well have been employed by Rohrer then and transferred."

53. When asked if people had been employed by the firm and then transferred to FFL, Mr Hale answered, "...I am not sure, I'm speculating really".

54. From the SRA's analysis of payments made by the firm it was established that the firm paid FFL £395,866.80 between April 2012 and March 2013, a period of 11 months. Mr Hale confirmed that the amount was, "high". Copies of FFL invoices were not provided to the SRA

Cloudfinity Hosted Solutions Limited ("Cloudfinity")

55. The Respondents were directors of Cloudfinity from 8 October 2012 until their resignations, along with AKD. The Second Respondent resigned on 8 March 2013; the First Respondent resigned on 27 June 2013. As well as AKD, a company called Netnexis Limited was a shareholder of Cloudfinity. The First Respondent was the sole director and shareholder of Netnexis Limited up until its dissolution on 16 September 2014.

56. At a meeting on 31 May 2013, attended by the First Respondent, Mr Hale and Ms Fieldhouse, the FIO was informed by the First Respondent that the firm's IT services were 'cloud' based and provided through Cloudfinity.

57. Mr Hale indicated that he was not aware that the Respondents were connected to Cloudfinity and the fact that they were directors was a surprise to him.

58. A copy of the firm's agreement with Cloudfinity (previously named 'Virtual Planet') showed that the First Respondent signed it on behalf of the firm on 28 June 2010. The Respondents were identified as the firm's contacts.

59. From the SRA's analysis of payments made by the firm, it was established that it paid Cloudfinity £75,242.86 between September 2011 and April 2013, a period of 20 months.

HUT Consulting ("HUT")

60. The Respondents were the owners and managers of HUT. A schedule prepared by the SRA highlighted that the firm paid £1,023,995.09 to HUT between June 2011 and February 2013, a period of 21 months.

61. When asked whether the payments were reasonable, at interview on 13 June 2013, Mr Hale accepted that, "they are very high". Mr Hale's salary was confirmed as being £60,000.00 per annum.

62. Mr Hale stated that he did not see the relevant invoices and nor did he authorise their payment.

Checkmate

63. Between 24 June 2011 and 20 December 2011, the firm paid £12,693.95 to Checkmate, which was a company of which Mr Schools was a director and shareholder.

Mountivation

64. The SRA's officers discovered that two payments totalling £42,500.00 were made to an entity named 'Mountivation' in June 2011 and April 2012. Mr Hale confirmed that, "Mountivation effectively were running a CPD course which was based in the hotel that [the Respondents] ran". The company appeared to be Mountivation Limited, a company owned by TS and his wife.

65. When asked if the firm paid this using drawdowns from the Axiom Fund, Mr Hale answered, "I suppose ultimately, yes". Further, when asked if this was a proper use of the funds, Mr Hale answered, "I suppose in that respect, probably not".

66. The Respondents confirmed, in their defence to the Axiom claim, that they "understood that Mountivation was a company created by [TS] and…Mountivation courses were run at the hotel in March 2010, March 2011 and March 2012".

Grand Tourist

67. The firm made payments of £34,404.00 to an entity named Grand Tourist from the firm's account between 11 January 2012 and 24 May 2012. Mr Hale confirmed he did not authorise the payments and the only person who could have done was the Second Respondent.

Investments

68. Monies received by the firm from the Axiom Fund were invested by the firm at (it was submitted) the instigation of the Respondents. Mr Hale stated that the Second Respondent, "took responsibility for the firm's investment strategy. In this respect she was self-appointed – [Mr Hale] had no involvement in the decisions that she made and [he] was not consulted".

IKEN Capital Commodity Fund ("IKEN")

69. The firm invested funds in the sum of £298,727.66 in an IKEN Capital Commodity Fund with JP Fund Administration (Cayman) Limited at 31 January 2013.

70. The Respondents resided at Iken Hall. The Respondents' son, Mr George Hutson, who was also a director of HUT, was one of the founding partners of IKEN.

71. Receipts by the firm on 26 and 27 February 2013 related to the return of the IKEN monies.

Pictet & Co

72. Over £3 million of the funds received from Axiom were "invested" by the firm with a Swiss bank, Pictet & Co, via "a kind of investment programme" on or around 21 February 2012.

73. The firm held an office account at Pictet & Co in Geneva ("Pictet") in the amount of £3,287,667.30 as at 31 August 2012 (the "Pictet Monies").

74. By email dated 9 November 2012 Mr Hale confirmed that, "this money was initially intended to be put into a funding programme which we've recently decided not to go ahead with and have requested that the full £3m be returned to us." He also confirmed that he and the Second Respondent were the, "sole signatories" for this account and that the monies had been invested before the suspension of the Axiom Fund. There was reference to the £3 million transfer having been ostensibly on behalf of Noble Finance Limited, said to be investing in the "Provartis Fund". Noble Finance Limited was a Marshall Islands company owned or controlled by TS.

75. Mr Hale confirmed that the funds were Axiom Fund monies. When asked who had made the decision to invest the monies, Mr Hale confirmed it was the Respondents. He was not, "specifically consulted about the … specific details as to where it was going..."

76. The Respondents confirmed that, "the decision to make the relevant investment was one participated in and consented to by [TS] and [RE]" and not Mr Hale, despite the fact that is understood that the funds were transferred on 21 February 2012, when Mr Hale was sole director and shareholder of the firm. They also confirmed that:

- the bulk of this sum was drawn down from the monies received from the Axiom Fund in relation to the case of MY;
- it was the Second respondent who undertook due diligence in relation to the investment scheme;
- it was the Respondents that considered the investment opportunity to be "attractive"; and
- it was the Second Respondent who effected the relevant transfer from the firm's account.

77. Mr Hale sent further information to the SRA on 28 May 2013. He stated:

> "..these funds were designated for an investment and were placed into a secure account with an Austrian lawyer (Jurgen Brandstatter of BMA Brandstatter Rechtsanwaite GmbH). This investment was intended to produce sufficient interest payments to ensure a regular cashflow and assist in the running of the business. Ultimately Rohrer & Co decided not to progress with the investment and countermanded the previous instructions to the investment coordinator and requested that the funds were returned. However, this instruction was not actioned by the Austrian lawyer and the funds were moved without the firm's knowledge.
>
> Rohrer & Co then instructed Mishcon de Reya and also a Swiss lawyer... to investigate the situation and assist in retrieving the £3m. However it has proven very difficult to obtain return of our funds ... We were able to find out that the money had been transferred to another account in Pictet in the name of Ben Smet ... Following the advice of our Swiss lawyer we had no choice other than issue a criminal complaint.
>
> ...
>
> Following representations ... we were successful in persuading the Swiss prosecutor that £540,000 should be returned to us ..."

78. Whilst Mr Hale had initially stated that he and the Second Respondent were the sole signatories on the Pictet account, and notwithstanding a purported bank statement having been provided to Dr Rowson, the account may not have existed (in the sense of having never been opened and/or controlled by the firm) and Mr Hale had never signed any documentation in relation to it.

79. Mr Hale confirmed that the bank statement provided to Dr Rowson had been received from the Second Respondent and he thought that the account opening documentation was, "probably in [the Second Respondent]'s name". When asked

about the fact that he had previously represented to the SRA that he and the Second Respondent were the signatories on the account, Mr Hale stated that, "what would have happened there is I would have taken that enquiry and said to [the Second Respondent], you know, 'what is the position?' and then she would have said 'we are both signatories on the account' and this was, 'a project that [the Second Respondent] was running'".

Attempts to Recover the Pictet Monies

80. A third party, Mr DA (purportedly of CE) was involved in attempts to retrieve the funds and was copied into email correspondence. He was an Israeli lawyer who had been found guilty in Israel of fraud and deception and had been banned from practising law for 14 years.

81. The firm instructed a Swiss attorney from Des Gouttes & Associés ("Des Gouttes"). The correspondence demonstrated that the Swiss attorney was under the impression that the Second Respondent was a partner of the firm.

82. The Respondents mostly conducted the dealings with Des Gouttes, routinely without Mr Hale being copied to emails exchanged. The Respondents used both Rohrer and personal email accounts in the course of correspondence. Mr Hale stated that he was, "not central to the correspondence" and, "was not aware of the retainer between the firm and Des Gouttes since this was arranged by [the Respondents]".

83. The Second Respondent was designated as the authorised representative of the firm to attend a hearing in Lausanne in relation to a criminal complaint filed by Rohrer against Mr Smet (in whose name it was alleged the relevant funds were held) on 22 January 2013. When asked how that was paid for, Mr Hale stated, "I presume that that was … through the fund, from the firm". He further stated that he had not authorised that expenditure.

84. The Second Respondent continued to be involved in this matter, despite the fact that the SRA had been informed that she left the firm in March 2013; Mr Hale had no proper understanding of the extent of her involvement.

85. The Respondents received a letter from Des Gouttes on 31 May 2013 which the First Respondent sent to Mr Hale with instructions that he should not, "release it [to the SRA] now as it may raise even more questions".

86. On 12 April 2013 Des Gouttes wrote to the Respondents to confirm that £540,000.00 had been transferred to Fladgate LLP. This included monies for the payment of two invoices totalling £368,890.00. Correspondence to the firm from Lorrells, who were involved in the MY matter, dated 16 April 2013 referred to funds totalling £368,890.00 having being received from the firm. Mr Hale suggested that this was akin to a holding account and he thought there was a retainer with Lorrells. He also confirmed that the decision to pay the monies had been made by him and the Respondents.

Fladgate

87. Whilst there is reference to Mishcon de Reya being instructed by Rohrer, the firm also instructed Fladgate in relation to this issue.

88. Mr Hale was the Director of Rohrer. The instructions to Fladgate originated from an email of 28 December 2012 from the Second Respondent which she also copied to YY, DA, and the First Respondent. In that email the Second Respondent stated: "In February 2012, our contacts [PA] and [MB] advised us to take part in a "SICAV" who (sic) was created by [CVH]". SICAV was an open-ended collective investment scheme most commonly used in Europe.

89. The email of instruction further stated:

> "After a few meetings we decided to go ahead with the scheme and on 21 February 2012 we transferred £3,000,000.00 pounds to BMA Law who are a respectable firm in Austria…."

90. The email stipulated that BMA Law were not to use or move the funds without direct written instructions. However, the Second Respondent informed Fladgate that, contrary to those instructions, the £3 million transferred had been, "co-mingled" with other funds in an account at Pictet.

91. The email concluded:

> "We are anxious to trace the funds and get them transferred back to us and put BMA Law on notice that they have transferred funds without our consent. Please find attached the company information and please send us your client account details."

92. There was no evidence that Mr Hale was aware of the instruction and the email from the Second Respondent was not copied to him. Mr Hale also indicated that, "the whole involvement of [DA] and [YY] was not explained to me and I didn't understand what they were doing".

93. An internal Fladgate email dated 8 January 2013 commented:

> "This is a rather strange matter. [The First Respondent] appears on Rohrer's website as Head of Operations. [The Second Respondent] is not shown at all. Contrary to what you understood, neither are solicitors. There are 8 solicitors there but only 1 principal called Christopher Hale.
>
> …
>
> … and why would they not chase BMA if as a result it had retained some money? It all looks very odd.
>
> And why are we being instructed when Rohrer could deal with it themselves (Hale is a litigator whose areas include fraud and banking) and why does [the Second Respondent] want the money to be paid back via our account?"

94. On 9 January 2013, the Second Respondent emailed BMA Law, copied to DA, requesting that he transfer £195,000.00 to the client account of Fladgate. Internal Fladgate emails record confusion as to whether this was on account of costs and asked whether the matter had been discussed with the Second Respondent.

95. The Second Respondent sent a signed request to Fladgate requesting the transfer of the sum of £195,000.00 received from BMA Law to an account in the name of Otterswick Limited (BVI) ("Otterswick") held to its order.

96. The sole shareholder and director of Otterswick was YY. The company had been registered in the British Virgin Islands on 19 April 2011.

97. Internal Fladgate emails recorded concerns with regard to the nature of the instructions they were receiving and which confirmed that DA was adamant that Fladgate only take instructions from the Respondents. No mention was made of Mr Hale.

98. Further exchanges of internal emails took place on 10 January 2013 in which it was confirmed that Fladgate had spoken with Mr Hale, and it "was not reassuring" and that Mr Hale, "....does not seem to know much about it!"

99. In a subsequent letter to the SRA Mr Hale stated that, "the whole involvement of DA and YY was not explained to me and I didn't understand what they were doing".

100. On 10 January 2013, Fladgate sent an email to Mr Hale confirming the instruction from the Second Respondent that the firm wished to send £3 million to Fladgate to hold to the order of "Ottoswick" (sic). However, when sending this email to Mr Hale, Fladgate also forwarded an email from the Second Respondent of 28 December 2012 which was copied to numerous parties, (including AA and YY), which stipulated that "these are office monies belonging to the firm". This contradicted the instruction that the funds should be held to the order of Otterswick.

101. Fladgate asked Mr Hale to confirm the position and whether Mr Hale was happy for it to receive the funds and hold them to the order of, "Ottoswick". There appeared to have been no response from Mr Hale to that request for information.

102. On 14 January 2013, Fladgate received £153,687.61 (€190,000.00) into its client bank account from BMA Law. On the same day Fladgate spoke with YY who provided instructions on the use to which those funds should be put, namely payment of fees and distribution of the balance in accordance with an email to be sent by him.

103. On 15 January 2013, Fladgate made a payment from client account of £133,687.61 to YY. Mr Hale did not provide any written instructions; funds were distributed in accordance with instructions from YY and/or the Second Respondent.

104. On 12 April 2013, Fladgate sent an email to YY and DA confirming that it did not have authority to authorise the release of the £540,000.00 to Otterswick, the only authority relating to the one provided by the Second Respondent on 9 January 2013.

105. Later, on 12 April 2013, Fladgate sent an email to YY and DA with the wording of a form of authority it would require to enable it to distribute funds received on behalf of Rohrer. However, that email had not been sent to Rohrer.

106. On 15 April 2013, Fladgate received £540,000.00 from Des Gouttes. On that date Fladgate also received an authority from Rohrer. That authority was signed by the First Respondent on behalf of Rohrer. It stated:

> "In accordance with the funding agreement between Otterswick and Rohrer, we hereby irrevocably authorise Fladgate to transfer any funds received to the client account for the benefit of Rohrer to Otterswick".

107. There was no indication that the First Respondent was properly authorised to provide such an authority.

108. On 15 April 2013 YY instructed that Fladgate should make the following payments as a matter of urgency during that day:

- £213,890.00 to Lorrells;
- £160,000.00 to the Respondents;
- £10,000.00 to Fladgate on account of fees;
- £156,110.00, representing the balance, to be paid to Otterswick Limited at YLO.

109. Those payments were made on the same date from the client ledger account of Rohrer.

110. Mr Hale confirmed that the initial contact with DA, YY and their associated companies came from the Respondents. The firm's offices were also the offices of CE from whom they leased the space, following discussions with DA and YY. Mr Hale asserted that he, "went on holiday over Christmas and New Year 2012 and came back to find that DA had been provided with access to a hot desk … I was not provided with any information as to what his role was … [the Respondents] had always been very vague as to what DA's involvement actually involved".

Allegations 1.7 and 1.8

Mulberry Finch Ltd ("MFL")

111. During the course of the SRA's investigation into Rohrer, the FIOs were informed by Mr Hale that some of the firm's staff had been transferred to MFL, which was based at Rohrer's former offices, along with approximately 35 interest rate swap files. Mr Hale indicated that the firm was talking to SN who was, "interested in coming in at a kind of higher management level" and was looking at both Rohrer and MFL. The contact with SN had come through the Respondents. He also stated that the Respondents were involved in the surrounding negotiations. He indicated that the intention had been for Rohrer to merge with MFL but that it had subsequently been decided that, due to Rohrer's outstanding liability to the Axiom Fund, the merger was not taken forward. At a meeting on 24 April 2013 Mr Hale indicated that the Second Respondent no longer worked for Rohrer and had gone to MFL. He provided the SRA with her contact details, being an email address at MFL.

112. Having received authorisation to do so, on 3 June 2013, an Investigation Officer from the SRA attended, without notice, MFL's offices to carry out an inspection and investigation into the activities of MFL. This investigation continued and concluded with the preparation of an Interim Forensic Investigation Report dated 26 June 2013.

Involvement of the Respondents in the sale of MFL

113. In or about December 2012, Ms Ebrahim, the director and joint owner of MFL, approached Legal Brokers Ltd to assist her in finding a purchaser for MFL. Legal Brokers Ltd introduced Ms Ebrahim to the Second Respondent and SN who had expressed an interest in purchasing the firm. The Second Respondent attended at least one meeting with Ms Ebrahim in relation to the purchase of MFL.

114. Ms Ebrahim and SN entered into a Sale and Purchase Agreement dated 11 March 2013 (the "Agreement"). The stated purchase price was £225,000.00.

115. Whilst SN confirmed at a meeting with the SRA's Investigation Officer on 11 June 2013 that CE had funded his purchase of MFL, he was not able to produce any paperwork relating to the transaction. The Applicant submitted that the Respondents were connected to CE together with DA and YY, who was a director and beneficial owner of that company.

116. In accordance with the Agreement, ownership of MFL was transferred to SN who was appointed as a director on 15 April 2013. Minutes of a meeting of the board of directors of MFL dated 15 April 2013 record a meeting in connection with the transfer of the ownership of the company to SN. Both the Respondents were recorded as being in attendance at that meeting.

117. At the interview with the SRA's Investigation Officer SN stated that in meetings with Ms Ebrahim, the Second Respondent was present at times. In the same interview, when asked about the Second Respondent's role, SN stated:

> "She was only involved with the IRS files. If [SN] visited an IRS introducer, he would take [the Second Respondent] with him as she knows about them ... referred work to SN, she was a consultant to [MFL] but not full time. Any IRS clients came from [the Second Respondent]. [The Second Respondent] worked with [Mr Hale], she was a consultant with [Mr Hale], she was at Rohere [sic] with [Mr Hale]. [The Second Respondent] had all the contacts".

118. During the course of interview on 13 June 2013 the First Respondent asserted that the Second Respondent no longer had any involvement with MFL and had not had any involvement since they, "brought the interest rate swaps over". However, in an interview of the same date with Mr Mark Lorrell of Lorrells, who by this time also had an involvement with MFL, Mr Lorrell confirmed that the Second Respondent introduced work to the firm and she was also present in the office on 3 June 2013.

The role of the First Respondent in MFL

119. The First Respondent was, at the material time, the approved COFA for Rohrer. He was also the COFA nominee for MFL although the SRA did not formally approve

this. Ms Ebrahim had been MFL's COFA and COLP until her departure from the firm. By email dated 6 June 2013 to the SRA, Ms Fieldhouse nominated herself as COLP and the First Respondent as COFA.

120. Whilst the First Respondent was not the COFA, he had an involvement with MFL as a consultant through HUT. It was proposed that he would be the COFA and also have an involvement in the IT operational aspects of the company. During the course of his interview he confirmed that he was combining his roles at Rohrer and MFL simultaneously.

121. In addition, payments totalling in excess of £10,000.00 had been paid from MFL's office account to Cloudfinity.

Allegation 1.9

122. On 14 May 2010 the First Respondent emailed TS and stated:

> "Hi Tim,
>
> Can you let me know if you would like us to sign something for the loan or, if not, please could you let me know when the transfer might be done.
>
> It's just that we need to make a few payments and get some orders placed..."

123. TS replied on 15 May 2010:

> "I will need some kind of paper trail for this. I have a re-visit from the [SRA] on the 17th June and they tend to go through all the books thoroughly and question what payments have been made to who, and the reasons why. I'm just thinking that it may look a little strange to them if ATM are transferring £75k to another new law firm. It may be more sensible to transfer a lesser amount prior to that date then send the balance after the 17th but I probably still need to come up with some kind of explanation/justification. Perhaps you guys can give this some thought on (a) how much you would need pre 17th June and (b) the rationale behind the transfer to present to the SRA."

124. The First Respondent replied on 16 May 2010:

> "We have been giving that some thought.
>
> One possibility is for us to invoice ATM from our company [HUT] for say IT Consultancy (something I used to provide). I'd need to add VAT but I assume you are VAT registered. (We do have a substantial, positive directors loan account in HUT, so we can just withdraw funds with no problems).
>
> ...
>
> Another possibility is that we do have a personal account in France and you could transfer euros to that if you wish."

125. On 17 May 2010, TS responded:

> "My preference is probably your first suggestion. I am meeting my accountant tomorrow so I can ask him about the vat position and also how I may get repaid (personally) from [HUT]. Ideally I could do with an invoice which says £75k with 50% as a deposit up-front and the balance upon completion of the work which could be after 17th June. Would that work for you?"

126. On 17 May 2010, the First Respondent replied:

> "We will try and renegotiate the office charges and get a credit line on some of the purchases. That should reduce the immediate, upfront costs.
>
> Our most pressing payment is to Richard as this part of the agreement between us. We are meeting him again in London on Wednesday to review the Case Management apps and to do some interviews. After that, we hope to sign for the office space.
>
> I'll send you an invoice anyway, to see if that works for you.
>
> To help us plan the cash flow, do you know when we might be able to make the first drawdown from the fund? We will be operational from 21 June, pending SRA approval."

Witnesses

127. The following witnesses provided statements and gave oral evidence:

- Stephen Wallbank - Forensic Investigation Officer in the Forensic Investigation Department of the SRA.
- Alan Hutson – the First Respondent.

128. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

129. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

130. The First Respondent confirmed at the outset of the hearing that the facts, as outlined above, were not in dispute. The interpretation of those facts by the Applicant, and the allegations themselves were all disputed. In the circumstances, the Tribunal found the facts to be as stated in the Factual Background above.

131. In relation to allegations 1.1 – 1.8, Mr Havard invited the Tribunal to infer that as regards those facts and matters which concerned only one of the Respondents, the nature of their relationship was such that the decisions and actions undertaken by one were with the knowledge and approval of the other. This, it was submitted, was clear from the documents, the fact that the Respondents were married, their central involvement in Rohrer and their involvement with external entities remunerated by the Rohrer.

132. The Respondents submitted that they considered the suggestion that married couples share all business details at all times "deeply offensive". The Applicant knew nothing about the 'relationship' of the Respondents, and those submissions should be retracted.

133. During his cross-examination, the First Respondent confirmed that there was nothing in the papers served in the proceedings in terms of the actions taken by the Second Respondent that caused him surprise, and there was nothing said or done by the Second Respondent that he would choose to distance himself from. He also accepted that he was aware of what was going on vis-à-vis their sole and joint roles in the firm.

134. The Tribunal determined that whilst the Respondents may not have been aware of the minutiae of their actions, they were aware of the decisions and actions each undertook. There were, as was accepted, times when their roles would overlap. Further, the First Respondent accepted that he was aware of what was happening as regards their sole and joint roles. Accordingly, the Tribunal inferred that the decisions and actions taken by one Respondent was with the knowledge and approval of the other, and considered allegations 1.1 – 1.8 in those terms.

135. **Allegation 1.1 - The First Respondent participated in and/or facilitated the misuse of funds received by Rohrer from Axiom.**

Allegation 1.4 - The Second Respondent participated in and/or facilitated the misuse of funds received by Rohrer from Axiom.

135.1 Mr Havard submitted that:

As regards both of the Respondents

- The Respondents were directly involved in and facilitated the drawing down of funds from the Axiom Fund, despite their connection to it, to Synergy and to TS;

- The firm received the first three advances from the Axiom Fund, totalling £423,600.00, in July 2011 prior to Mr Hale's appointment as a director;

- The Respondents (and in particular the Second Respondent) were aware, or should have been aware, of the permitted uses for Axiom monies in accordance with the

terms of the PSSA and PLFA. Despite being so aware, the firm used substantial sums of Axiom monies in breach of the funding agreements and at least £1,495,104.75 was appropriated for the Respondents' use

- The firm made payments to HUT and/or the Respondents totalling £1,023,995.09 between June 2011 and February 2013 in circumstances where Mr Hale did not have sight of any invoices nor did he authorise payments. The Respondents were the only beneficiaries of HUT;

- The Respondents used Axiom monies for investments in IKEN and Pictet in circumstances where such investments were not permitted uses. The provision of monies to IKEN was the provision by the Respondents of monies to their son for investment purposes. This was a clear conflict

- The Axiom Fund lost the entirety of the funds advanced to the firm which have not been repaid;

- The Respondents conducted the recovery of the Pictet Monies and, together with DA and YY, facilitated the diversion of sums of £195,000.00 and £540,000.00, representing part of the Pictet Monies, away from the firm. £160,000.00 of the monies recovered was paid to the Respondents; the remainder was not used by the firm.

135.2 *In relation to the First Respondent*

- On 15 April 2013, the First Respondent provided an authority to Fladgate purporting to be on behalf of Rohrer & Co authorising it to, "to transfer any funds received to the client account for the benefit of Rohrer to Otterswick". Those funds were then distributed in a wholly inappropriate way.

135.3 *In relation to the Second Respondent*

- The Second Respondent negotiated the funding arrangements with the Axiom Fund on behalf of the firm despite being named as a manager in Synergy;

- In relation to a payment in the sum of £34,404.00 to Grand Tourist from the firm's account, Mr Hale confirmed he did not authorise the payment and the only person who could have done was the Second Respondent;

- Of the monies due to the Axiom Fund, £4.8 million related to a divorce matter concerning Ms Y in relation to which the firm's dealings with the Axiom Fund were predominantly undertaken by the Second Respondent. A sum in excess of £3million from this drawdown was transferred by the Second Respondent to BMA Law as a purported investment;

- On 9 January 2013, the Second Respondent emailed BMA Law, (copied to DA), requesting the transfer of £195,000.00 of the firm's funds to the client account of Fladgate and later sent a signed request to Fladgate requesting the transfer of said funds to an account in the name of Otterswick.

135.4 As regards the terms of the PSSA and the LFA it is alleged that the Respondents:

- Knew and/or were reckless to the fact that the firm had not complied with the terms of the PSSA and the PLFA, pursuant to which the money was purportedly advanced. The terms of those agreements were intended to protect the interests of the Axiom Fund;

- Knew and/or were reckless to the fact that the PSSA and the LFA pursuant to which the money was advanced did not reflect and were inconsistent with the purposes for which the firm intended to use and/or in fact used the money.

135.5 The Respondents denied causing or permitting the firm to receive and subsequently misuse any of the loan monies provided by Axiom. TS and RE confirmed the basis on which loans were provided to the firm namely for the running of the business. The firm had no capital of its own and no other income, and was reliant on the loan monies to operate. They were aware that loans were provided on the basis of qualifying cases; that loans were available to the firm to use as required; and that loans and interest were repayable at the conclusion of the case. This was, to their knowledge, the same way that other panel firms operated. In the circumstances, it was denied that the Respondents knew or were reckless as to the firm's compliance with the PSSA/LFA, or that the use of the monies was inconsistent with and did not reflect the uses permissible under the PSSA/LFA.

135.6 As regards the particulars relating to both Respondents, it was submitted that:

- The Respondents were not directly involved in the Axiom Fund. The First Respondent facilitated the request for loans by providing the required information in the full knowledge of the management team of the firm and the Investment Manager;

- The Respondents were not connected to Synergy;

- The monies received prior to Mr Hale's appointment were received pursuant to the PSSA and in the knowledge and with the agreement of TS and RE, the then directors of the Firm;

- The Respondents were consultants and not party to the loan agreements. The Second Respondent whilst having undertaken a small amount of work for the Investment Manager had no part in any negotiation with Axiom funding arrangements;

- Their knowledge of the permitted uses of Axiom monies was derived from information given to them by TS/RE;

- The payments to HUT were made pursuant to the consultancy agreements in place with the firm. It was not for the Respondents to ensure that Mr Hale approved their invoices or reviewed their contracts. That was a matter for him as the sole principal of the firm;

- Mr Hale signed the investment contract and redemption for IKEN. He also signed the investment signature card that related to the Pictet Monies. For the avoidance of doubt, there was no investment into Pictet. The investment was potentially with Provartis. That investment did not take place, and the monies were misappropriated;

- Whilst no monies were repaid, the firm did not have the opportunity to realise any profits from its cases as the firm was intervened into. Following the intervention, Ms Y won her case. The RTB cases would have produced a substantial return;

- The Respondents did not facilitate the diversion of the returned Pictet Monies away from the firm. The monies returned to the Respondents was money belonging to them. The Respondents were not responsible for the actions of DA/YY;

135.7 As regards the particulars relating to the First Respondent alone it was submitted that the letter to Fladgate was written at the request and dictation of DA, and was agreed by SN.

135.8 As regards the particulars relating to the Second Respondent alone, it was submitted that:

- She did not negotiate the funding arrangements with the fund, and was not a manager of Synergy. Her name had been included in Synergy marketing materials to bolster their credentials. The Second Respondent had not objected to this, as she was keen to join the organisation, however she was rebutted on two occasions;

- The payment to Grand Tourist had been authorised by TS prior to his departure;

- Ms Y's matter was introduced to the firm by TS. The funds were sent to BMA Law for safe keeping prior to an investment opportunity, and were to be held to the order of the firm. TS was fully aware of this, approved the transfer, the deposit of the funds and the proposed investment;

- The Respondents had also sent their own funds to BMA Law pending a similar investment opportunity. Some of that money was stolen and was subject to a separate legal case for its recovery. €195,000.00 (£160,000) being the balance of the Respondents' money was sent to Fladgate, and returned to the Respondents. That money did not form part of the firm's funds.

135.9 The Tribunal determined that the only proper use of monies from the Axiom Fund was in accordance with the terms of the PSSA or LFA; any use of Axiom monies outside the terms of those agreements was improper. The Respondents accepted that the monies had been used in the ways and amounts described by the Applicant. They denied that the use was improper, as, it was submitted, such uses had been authorised by TS, who was the Investment Manager for the Fund. The First Respondent was directly involved in the drawing down of monies from the Fund; he provided the information in relation to the cases to Axiom. The Tribunal noted that there was no written confirmation that the firm could use the monies otherwise than in accordance

with the PSSA/LFA. Given that Axiom monies had been used for purposes not permitted by the loan agreements, the Tribunal determined that the monies obtained had been misused as pleaded and alleged. The Tribunal considered that even in circumstances where the Respondents believed that they could use Axiom monies for the general running costs of the firm, this could not, and indeed did not, extend in their minds to the making of investments that were unrelated to the practice of the firm.

135.10 The Tribunal found the investment in IKEN to be the worst example of the Respondents' misuse of Axiom Funds. As detailed, the investment by the firm into IKEN was effectively the use of Axiom monies by the Respondents, to invest in a company owned by their son. No security was obtained on behalf of the firm in relation to the investment of those funds. The Tribunal determined that this could not, on any understanding of the permitted uses of the monies, be believed by the Respondents to be a legitimate and proper use of Axiom monies. Whilst it seemed that the funds were later returned, those funds were again misused, and were not repaid to Axiom.

135.11 It was the Respondents who had written to Fladgate in relation to the authority to use/transfer the recovered Pictet Monies. The Respondents asserted that £160,000 of the recovered Pictet Monies belonged to them, and had therefore been legitimately returned to them. The Tribunal noted that there was no correspondence provided by the Respondents to show that of the £540,000 sent to Fladgate, £160,000 was for the Respondents. The emails requesting the return of monies were sent on behalf of the firm, and it was clear from the correspondence that those monies were recovered on behalf of the firm, and not the Respondents personally. Whilst the Tribunal accepted that the Respondents had made a personal investment, it did not accept and there was no evidence to show that the return of the monies included the return of any part of their personal investment. Further, given that it was the Respondents who had taken the lead in the recovery of the Pictet Monies, they were aware that their personal monies were not included in the monies sent to Fladgate. The Tribunal accepted that the Respondents were not responsible for the acts of DA and YY, however it was their communications with Fladgate that provided DA/YY with the means to divert monies away from the firm. The diversion of those monies included the provision of £160,000 directly to the Respondents.

135.12 The Tribunal determined that the fact that monies were drawn down prior to Mr Hale's appointment as a director was not evidence of misconduct, however the use of that money for purposes not in accordance with the loan agreements was, as alleged, improper. Similarly, amounts drawn down after Mr Hale's appointment were not used in accordance with the terms of the loan agreements. Accordingly, the Tribunal found allegations 1.1 and 1.4 proved beyond reasonable doubt on the facts, evidence and submissions.

136. **Allegation 1.2 - The First Respondent improperly made and/or facilitated payments from Rohrer which were paid to the Respondents, whether to themselves directly or to companies they owned or controlled;**

Allegation 1.5 - The Second Respondent improperly made and/or facilitated payments from Rohrer which were paid to the Respondents, whether to themselves directly or to companies they owned or controlled.

136.1 The firm made payments totalling at least £1,495,104.75 between June 2011 and February 2013 to the Respondents and/or entities to which they were connected. Further, £160,000.00 was diverted to the Respondents from the Pictet Monies.

136.2 Mr Harvard submitted that in all the circumstances the payments were improperly made by the Respondents and/or received by the Respondents and third party entities. In particular:

- The Respondents were directly involved in and facilitated the drawing down of funds from Axiom and were connected to the Axiom Fund, Synergy and to TS;
- The Respondents were aware, or should have been aware, of the permitted uses to which funds advanced from the Axiom Fund could be used in accordance with the terms of the PSSA and LFA.
- Mr Hale was not aware:
  - (i) of the extent of payments made by the firm to the Respondents and companies associated with them;
  - (ii) never saw the invoices in respect of which the payments to HUT totalling £1,023,995.09 between June 2011 and February 2013 were made; and
  - (iii) did not directly authorise those payments.

136.3 The First Respondent submitted that:

- The payment of £160,000 was the repayment of monies due to the Respondents from BMA Law;
- The Respondents were never involved in or connected with the Axiom Fund. TS was a friend;
- The Respondents were recruited as consultants. They were not party to any of the loan agreements, were not solicitors and had not read the loan documentation. The Respondents relied on the information provided to them by TS and RE as to the purposes for which loan monies could be used;
- The payments received by HUT were for work undertaken by the Respondents. HUT was retained under a signed consultancy contracts, and invoices were submitted in accordance with the terms of those contracts;
- FFL submitted invoices for work undertaken within the terms of the outsourcing contract. The net amount paid to FFL was £325,000. Of that £90,000 was paid to HUT and £235,000 was for the running costs of that company;

- Cloudfinity submitted invoices for its work, and was paid in the normal course of business. The Respondents received no remuneration from Cloudfinity;

- The First Respondent submitted the reports necessary to procure the loans using an established and accepted procedure.

136.4 As detailed in its findings to allegations 1.1 and 1.4 above, the Tribunal determined that the terms of the both the PSSA and the LFA were clear as regards the permitted uses of the monies.

136.5 The Tribunal noted that the Respondents' income from HUT alone equated to an average of £48,000 per month. Whilst HUT may have had its own liabilities, the Respondents were the sole beneficiaries of that company. Further, FFL's average monthly income was approximately £36,000 per month. Even if it were accepted that the Respondents did not personally benefit from the monies paid by the firm to Cloudfinity, the Respondents, together, were taking on average £84,000 per month, at a time when Mr Hale's annual income was £60,000. The Respondents were aware that the sole income into the firm was monies from the Axiom funds and it was the First Respondent who arranged for, and facilitated the draw-down of monies from Axiom.

136.6 The Tribunal, having already found that the Respondents had misused Axiom monies received by the firm, also found that the payments made by them to themselves and/or companies which they owned or controlled were improperly made. The Tribunal noted that Mr Hale, the person with ultimate responsibility for the firm, was unaware of the level of remuneration that the Respondents, or their companies were receiving. He had not authorised those payments, and seemed to be unaware of the services provided by FFL. He was likewise unaware of the Respondents' connection to Cloudfinity. The Tribunal noted that the Respondents had not sought to argue that Mr Hale was aware of the amount of their remuneration, but instead stated that his lack of awareness was due to his own failings, and not a matter for them. The Tribunal determined that the payments made were authorised by the Second Respondent, as the only other signatory to the firm's office account. Further, the Respondents continued to be remunerated by the firm even after their awareness of the collapse of the Axiom Fund, in circumstances where they knew that the monies in office account were Axiom monies as the firm had generated no income, and where the cost of obtaining those monies to the firm was the FF.

136.7 Accordingly, the Tribunal found allegations 1.2 and 1.5 proved beyond reasonable doubt on the facts, evidence and submissions.

137. **Dishonesty in relation to allegations 1.1, 1.2, 1.4 and 1.5.**

137.1 As accepted by the parties, the test to be applied in considering dishonesty was that set out in Twinsectra v Yardley and others [2002] UKHL 12, as applied to disciplinary proceedings by Bultitude v Yardley [2004] EWCA Civ 1853 and Bryant v Law Society [2007] EWHC 3043. As per Lord Hoffman at paragraph 27 of Twinsectra:

> "…. there is a standard which combines an objective and a subjective test, and which requires that before there could be a finding of dishonesty it must be established that the (defendant's) conduct was dishonest by the ordinary standards of reasonable and honest people and that (he) himself realised that by those standards his conduct was dishonest."

137.2 This was the test which had been approved by the courts, and was applied by the Tribunal. The Tribunal noted that there was no suggestion that the Respondents' capacity to distinguish between right and wrong had been impaired by mental or any other illness.

137.3 Mr Havard submitted that the Respondents' conduct was dishonest by the standards of reasonable and honest people and they knew that, by those standards, their conduct was dishonest, for the following reasons:

- The Respondents were directly connected with the Axiom Fund and TS;
- The Second Respondent was the person responsible for negotiating the funding arrangements with the Axiom Fund on behalf of the firm and yet was involved with Synergy. She therefore had a conflict of interest between her duties to the Axiom Fund and its individual investors (in her capacity as consultant) and her duties to the firm. She may not have been acting in the best interests of the Axiom Fund when arranging the drawdown of funds and using them for the benefit of the Respondents and other third parties contrary to the terms of the PSSA and LFA;
- They misused the funds and/or permitted the misuse of funds including by paying and/or receiving sums totalling £1,495,104.00 to themselves and/or companies owned or operated by them between June 2011 and February 2013; and
- They improperly made and/or facilitated payments from the firm to themselves and/or companies owned or operated by them.

137.4 Mr Havard referred the Tribunal to the case of Donkin v The Law Society [2007] EWHC 414 (Admin). At paragraph 13 Lord Justice Maurice Kay stated:

> "In course of submissions reference was also made to Bultitude v The Law Society … which illustrates that dishonesty does not require proof of an intention to permanently deprive the clients of their funds and that the subjective element in the two-stage Twinsectra test can be satisfied by a reckless disregard which negatives honest belief."

137.5 Mr Havard submitted that if the Tribunal did not accept that the Respondents deliberately intended to deprive the Fund of monies, they approached their use of Axiom monies with such reckless disregard so as to satisfy the subjective limb of the Twinsectra test.

137.6 The Respondents vehemently denied that their conduct was dishonest. The First Respondent submitted that they had acted with honesty, integrity and professionalism throughout their time at the firm. They could now see that they had been manipulated by others.

137.7 The Tribunal found that there could be no doubt that reasonable and honest people, operating ordinary standards, would find the improper use of the Axiom monies to be dishonest. Further, reasonable and honest people operating ordinary standards would consider improperly paying money to companies one owned or controlled, or improperly investing in a relative's investment scheme was dishonest. Accordingly, the objective limb of the Twinsectra test was satisfied.

137.8 The First Respondent was the COFA, yet he had failed to review either of the contracts under which the firm was accepting and using monies when he was appointed to that role. As the COFA, it was the First Respondent's responsibility to be fully aware of all financial aspects of the business. The Second Respondent was the liaison between the firm and the fund, and was the named point of contact for the LFA. The Tribunal noted that when the loan agreements were requested by the Applicant during its investigation, it was the Second Respondent who gave Mr Hale copies of the agreements to forward to the Applicant. The Tribunal could not be sure, beyond reasonable doubt, that the Respondents had read either loan agreement. However, the Tribunal was satisfied beyond reasonable doubt that in failing to read the PSSA or the LFA, they had acted with reckless disregard such as to negative honest belief. This was particularly the case given that they were running the firm and determining how the monies should be spent.

137.9 The Respondents had continued to utilise Axiom monies for the payment of their invoices when they were aware that the Axiom fund had collapsed, and in the full knowledge that monies in office account were Axiom monies. Payments were made to HUT (until February 2013), FFL (until March 2013), and Cloudfinity (until April 2013). When the First Respondent was asked about the payments made subsequent to the Fund's collapse, he stated that services had still been provided to the firm, and so the Respondents had still drawn an income from the firm. As regards the level of his fees, the First Respondent explained that his fees were in accordance with his consultancy agreement, (approved by TS and RE) and that he charged £750 per day. The agreement, however, had his daily rate listed at £1,000 per day. When asked why he had charged less than the amount in the agreement, the First Respondent stated "I don't know." When asked to justify the level of charges made given the size of the firm, the First Respondent stated "...my fees are my fees. That's my charge rate." The First Respondent accepted that the amounts paid by the firm to the Respondents were "significant". The Respondents had continued to remunerate themselves, not only in the knowledge of the collapse of the Fund, but also knowing that the actual cost to the firm would include the additional 50% FF. The monies used were not derived from income, the firm had none. Instead it was loan monies – extremely expensive loan monies. The Tribunal determined that in remunerating themselves/their companies in the manner in which they did, the Respondents had acted with reckless disregard such as to negative honest belief.

137.10 As detailed in its findings at allegations 1.1 and 1.4 above, the Tribunal considered the investment into IKEN to be the worst example of the Respondents' misuse of Axiom monies. Even if, on their case, they believed that the funds were for the general running costs of the firm, this investment had no relation whatsoever to that purpose. Further, no risk assessment had been undertaken and no security had been arranged. The First Respondent stated that "with the benefit of hindsight" he could see that providing sums to his son in this manner created a conflict. The Tribunal

determined that the conflict would have been clear to the Respondents from the outset. The Respondents both described themselves as "experienced and successful" in business. Given their experience, it was inconceivable that (a) they did not recognise the risk of providing monies in that manner, and (b) the conflict of interests that arose given the recipient of the sums. The Tribunal determined that their actions in this regard were reckless such as to negative honest belief.

137.11 Accordingly, the Tribunal having determined that the Respondents acted recklessly, found beyond reasonable doubt that the subjective limb of the Twinsectra test was satisfied, and the Respondents conduct had been dishonest as regards allegations 1.1, 1.2, 1.4 and 1.5.

138. **Allegation 1.3 - The First Respondent exerted an inappropriate level of control over the activities of the firm.**

Allegation 1.6 - The Second Respondent exerted an inappropriate level of control over the activities of the firm.

138.1 Mr Havard submitted that the Respondents exercised improper control and/or influence over the running of the firm. There was ample evidence to illustrate that they were at the centre of the firm. They were fully in control of the drawdown of funds from Axiom. Substantial payments were made to entities they owned or controlled, those payments often not being authorised by Mr Hale. They took the lead role on the investments made by the firm (IKEN and Pictet).

138.2 Further, and in particular:

138.3 *As regards both of the Respondents:*

- It was the Respondents who offered a permanent contract to Mr Hale and it was the Respondents who also suggested that he become a director of the firm;
- Mr Hale confirmed that he had no input into how the firm was run and was never provided with any financial information;
- Mr Hale was not aware that the Respondents were connected to Cloudfinity;
- The firm received the first three advances from the Axiom Fund, totalling £423,600.00, in July 2011 prior to Mr Hale's appointment as a director;
- Mr Hale was not aware of the extent of payments made by the firm to the Respondents and companies associated with them, never saw the invoices in respect of which the payments to HUT totalling £1,023,995.09 between June 2011 and February 2013 were made, and did not directly authorise those payments;
- Mr Hale did not have access to the firm's client bank account statements and client matter ledgers;
- The Pictet Monies were invested in a dubious investment scheme at the instigation of the Respondents;

- The Respondents took the lead role in the recovery of the Pictet Monies. In fact the great majority of the correspondence in relation to the recovery of the monies from Pictet were sent to the Respondents and DA and not Mr Hale, the sole director and shareholder of the firm. Fladgate was also under the mistaken belief that the Respondents were solicitors. Internal Fladgate emails recorded concerns with regard to the nature of the instructions they were receiving and confirmed that DA was adamant that Fladgate only take instructions from the Respondents, no mention being made of Mr Hale;

- The Respondents gave instructions for the subsequent utilisation of the Pictet Monies and, together with DA and YY, facilitated the diversion of sums of £195,000.00 and £540,000.00, representing part of the Pictet Monies away from the firm including for the Respondents own purposes.

138.4 *As regards the First Respondent*

- Despite his connection with Cloudfinity, the firm's agreement with that company records the First Respondent signed it on behalf of the firm and it identified the Respondents as the firm's contacts;

- FFL, a company owned by the First Respondent, carried out the firm's administration function;

- Mr Hale was not aware of the precise extent of services provided to the firm by FFL for which the firm paid £395,866.80, and despite being the sole director of the firm, appeared to demonstrate a lack of understanding of the employment status of individuals involved with the firm and whether they were employed by the firm or FFL;

- The Respondents received a letter from Des Gouttes on 31 May 2013 which the First Respondent sent to Mr Hale with instructions that he must not, "release it [to the SRA] now as it may raise even more questions";

- The First Respondent sought to mislead the Swiss authorities by instructing Des Gouttes to inform the authorities that the £540,000.00 released was to be used by the firm "to permit us to operate for a month", when in fact not a penny of the £540,000.00 was received or used by the firm;

- On 15 April 2013, the First Respondent provided an authority to Fladgate purporting to be on behalf of Rohrer & Co authorising it "to transfer any funds received to the client account for the benefit of Rohrer to Otterswick";

- The First Respondent led the negotiations for the sale of the firm by way of a "pre-pack" to Lorrells.

138.5 *As regards the Second Respondent*

- Mr Hale confirmed that the name 'Rohrer' was chosen as it was, "apparently an old family name in [the Second Respondent]'s family";

- The Second Respondent was a signatory on the firm's accounts and made payments without the knowledge and/or approval of Mr Hale, the firm's sole director and shareholder;

- The Second Respondent did not disclose her connection to Synergy to Mr Hale;

- In relation to payments in the sum of £34,404.00 to Grand Tourist from the firm's account between 11 January 2012 and 24 May 2012, Mr Hale confirmed he did not authorise the payments and the only person who could have done was the Second Respondent;

- The Second Respondent remained heavily involved in the recovery of the Pictet Monies even after she ceased to be retained by the firm;

- The Second Respondent instructed Fladgate on behalf of the firm in circumstances where there is no evidence that Mr Hale was aware of the instruction and emails from the Second Respondent were not routinely copied to him;

- On 9 January 2013, the Second Respondent emailed BMA Law, copied to DA, requesting that he transfer £195,000.00 of the firm's funds to the client account of Fladgate;

- The Second Respondent sent a signed request to Fladgate requesting the transfer of said funds to an account in the name of Otterswick.

138.3 Mr Hale accepted in his letter to the SRA dated 7 September 2014 that he failed to exercise any control over the management of the firm and, as a result, allowed the Respondents to exercise improper control and/or influence over the running of the firm.

138.4 It was submitted that in all the circumstances the evidence demonstrated overwhelmingly that the Respondents exercised an inappropriate level of control over the firm.

138.5 The First Respondent accepted that as part of the management team at Rohrer, both Respondents had influence over the firm.

138.6 *As regards the particulars cited against both Respondents:*

- The Respondents accepted that they were centrally involved in the management of the firm, and that Mr Hale was not aware of the Respondents' connection with Cloudfinity;

- Mr Hale was offered a permanent contract by the Second Respondent following agreement with RE. Similarly, the offer of directorship was made following a proposal by RE with TS's agreement;

- Mr Hale was present at management meetings and was able to seek any information he required. Any inference that information was withheld from him was wrong;

- The firm applied for funding before Mr Hale's appointment under the direction of the previous owners. This was a non-point;

- Mr Hale was busy with legal matters. His failure to review contracts for staff, suppliers and other financial information was not the Respondents' responsibility;

- The First Respondent had no control over client account statements and client matter ledgers;

- The Pictet Monies were never sent to Pictet, but were sent to BMA Law to be held on account. Those monies were not invested but were in fact stolen from BMA Law;

- The Respondents accepted they took the lead roles in the recovery of the Pictet Monies. This was with the full agreement and knowledge of Mr Hale;

- The Respondents also sent a significant sum of their own money to BMA Law. Ultimately £160,000 of that money was returned to them. As to providing instructions for the utilisation of the returned monies, it was YY who directed the distribution of those monies.

138.7 *As regards the First Respondent:*

- The contract was initially with Virtual Planet, a company with which the Respondents were not connected. That contract was signed on the firm's behalf by the First Respondent following agreement with RE;

- FFL was formed with the knowledge and agreement of the management team;

- The role of FFL was known by all; Mr Hale was either confused or was trying to blame others;

- The email sent by the First Respondent of 31 May 2013 read:

> "I think it will be useful to have this to hand in case we have any more enquiries from the SRA. Probably not necessary to release it now as it may raise even more questions but a good letter to have."

There was nothing sinister in the email. The First Respondent was simply suggesting retaining the letter until further information was available in what was a fast developing and confusing situation.

- At no time did the First Respondent seek to mislead the Swiss Prosecutor. At that time DA had assumed the management and financial control of the firm. The First Respondent had compiled two lists of urgent payments for the Swiss Prosecutor; the sums required for payments in relation to Ms Y's case were diverted by DA or YY.

- The letter to Fladgate was sent at the request of, and dictated by DA. The First Respondent checked with SN that this was appropriate and was told that it was, given the firm's liabilities to Otterswick.

- The First Respondent did not lead the way on the pre-pack sale, and had very little involvement with that proposed transaction.

138.8 *As regards the Second Respondent:*

- All procedures were fully documented and agreed by the management team. The payments were made electronically by the office cashier or the finance manager.

- There was no connection between the Second Respondent and Synergy.

- The payment to Grand Tourist had been authorised by TS.

- The matter of the stolen funds was taken seriously by the Second Respondent such that she continued to assist in their recovery even after her contract was terminated.

- Mr Hale was always advised and updated as to progress.

138.9 The First Respondent submitted that the Respondents should not be blamed for Mr Hale's failure to carry out his duties responsibly. Whilst it was accepted that, as part of the management team, the Respondents had influence over the firm's activities, it was not accepted that they exerted an inappropriate level of control over the activities of the firm.

138.10 The Tribunal determined that it was clear from the language used by the First Respondent in his evidence that the Respondents considered the firm to be their firm. The First Respondent had explained that the Respondents, having become friends with TS, were interested in setting up a London firm, with funding being provided for that purpose by TS. Whilst the original company that was established did not trade, the First Respondent explained that "we became a trading entity of Emmett's" and that "from the first day of trading we needed IT." It was also clear, and not disputed, that the intention was to turn the firm into an ABS with the Second Respondent having a shareholding in any ABS. The Tribunal accepted that Mr Hale believed that the Respondents were his bosses. The Second Respondent accepted that she had offered him a permanent position, and had invited him to become a director of the firm. The Tribunal determined that Mr Hale was recruited by the Respondents to 'front' or legitimise the firm, and that it was the Respondents who were, in fact, running and managing the firm. It was clear that Mr Hale was not the primary decision maker and that he was working under the Respondents' direction. He had no input into the decision making processes at the firm in terms of its

management, and no authority when it came to the finances of the firm. The Tribunal determined that whilst, as part of the management team, it was proper for the Respondents to have some input into decision making, it was for Mr Hale, as the sole Principal, to make the final decisions that were of significance for the firm, and that in controlling the firm in the manner in which they did, the Respondents exercised an inappropriate level of control over the activities of the firm.

138.11 The First Respondent had accepted that Mr Hale was unaware of the Respondents' connection to Cloudfinity, and also had no knowledge of the amounts paid to the Respondents and companies associated with them. The Tribunal determined that it did not assist the Respondents for the Second Respondent to assert that she did not actually make the payments, which were made through the finance department of the firm. This was particularly the case as the Second Respondent, as the only other signatory to the office account, must have authorised those payments.

138.12 The Pictet Monies were invested whilst Mr Hale was the sole principal of the firm. The Second Respondent stated that this was at the instigation of TS. The Tribunal determined that it was not TS's decision as to whether the firm invested Axiom monies; that was a decision for Mr Hale to take. At the time of the 'investment' TS was neither a director nor a shareholder in the firm. Notwithstanding this, the decision to 'invest' a substantial amount of money was made by TS and the Second Respondent. The Tribunal accepted that Mr Hale had signed the documentation, but determined that this was, as alleged, at the instigation of the Respondents.

138.13 As regards the recovery of the Pictet Monies, the Tribunal noted that this was led by the Respondents, with Mr Hale being excluded from many of the emails in this regard. The Tribunal determined that the Second Respondent had taken the recovery of the Pictet Monies seriously as was submitted, but that her interest was motivated not only by the recovery of monies for the firm, but recovery of the monies paid personally by the Respondents.

138.14 The fact that the First Respondent checked the appropriateness of the email sent to Fladgate, in relation to the transfer of recovered Pictet Monies with SN and not with Mr Hale further demonstrated, the Tribunal determined, that Mr Hale was not regarded by the Respondents as running the firm or being the primary decision maker at the firm. The level of their remuneration from the firm in comparison to Mr Hale was a further indicator of the level of their influence over the practice.

138.15 The Tribunal determined that Mr Hale's failure to exercise any control over the management of the firm, was not, in and of itself, evidence that the Respondents had exerted an inappropriate level of control over the activities of the firm. However, it was clear, on the evidence and the facts, that the Respondents had exerted an inappropriate level of control over the activities of the firm, facilitated by Mr Hale's failings. Accordingly the Tribunal found allegations 1.3 and 1.6 proven beyond reasonable doubt as pleaded and alleged.

139. **Allegation 1.7 - The First Respondent exerted an inappropriate level of control over the activities of the firm.**

Allegation 1.8 - The Second Respondent exerted an inappropriate level of control over the activities of the firm.

139.1 Mr Havard submitted that the Respondents' positions of influence as regards the activities of the firm were demonstrated by;

- Their prior involvement with Rohrer and the circumstances of that firm's demise was such that there were serious concerns as to their involvement in the acquisition of and subsequent activities of MFL;
- Several payments totalling in excess of £10,000.00 were made by MFL to Cloudfinity;
- The purchase of MFL was funded through CE, with which the Respondents were linked;
- The minutes of the board meeting on 15 April 2013, arranged for the purpose of finalising the transfer to MFL, record that the Respondents were present;
- MFL received client files from Rohrer, was based in its former offices and a number of staff were "TUPE'd" over to MFL;
- SN had previously been introduced by the Respondents to Rohrer & Co;
- The Second Respondent was prominent in the transfer of files to MFL and attended at least one meeting with Ms Ebrahim in relation to the purchase of MFL;

139.2 The First Respondent submitted that:

- It was SN who requested that Cloudfinity be engaged by MFL. Mr Hutson stated that at that time, he had no connection to Cloudfinity;
- The Respondents had no connection with CE, which was an FSA registered company;
- As regards the attendance at the Board Meeting, the Second Respondent recalled attending that meeting for the purposes of her involvement in transferring the IRS cases from Rohrer to MFL. The First Respondent vaguely recalled attending the meeting. His attendance was due to his involvement in moving the technology across to MFL;
- The transfer of the staff and IRS cases was conducted in compliance with SRA requirements and with the full knowledge of the management of both firms. The SRA ethics committee had confirmed that the transfers were compliant and correct;

- It was DA and not the Respondents who introduced SN to Rohrer, and it was DA that was connected to CE.

139.3 The First Respondent submitted that neither Respondent had positions of influence at MFL, nor did they exert an inappropriate level of control over that firm. Any services they provided were at all times under the direction of the Solicitor owner of that firm.

139.4 The Tribunal noted that in his interview with the SRA of 11 June 2013, when asked about the Second Respondent's role, SN stated that she was "not involved with the running of the firm". In response to the same question about the First Respondent, SN stated that he "only does IT" and was "only there as and when he is needed." Whilst he had done some work he had not yet been paid, however "all [the First Respondent] had done so far was move so [me] desks around..."

139.5 The Tribunal did not accept that the roles undertaken by the Respondents, in assisting with the transfer of the IRS cases, assisting with the movement of IT, and attending meetings demonstrated that they exerted an inappropriate level of control over the activities of MFL. Nor were the payments to Cloudfinity evidence of control exercised by the Respondents. Accordingly, the Tribunal did not find allegations 1.7 and 1.8 proved beyond reasonable doubt; those allegations were thus dismissed.

140. **Allegation 1.9 - The First Respondent attempted to mislead the SRA by falsely preparing and sending invoices to a third party. In doing so he attempted to disguise the true nature and/or purpose of a loan advance.**

140.1 Mr Havard submitted that the email chain between the First Respondent and TS demonstrated that the First Respondent thought it necessary to seek to hide the true nature of the transaction from the SRA. This was a matter of serious concern. The First Respondent was providing TS with options as to how to conceal the loan from the SRA. The options were, it was submitted, untruthful and designed to mislead the SRA.

140.2 Despite the fact that there was no evidence that any consulting work had in fact been carried out for or on behalf of ATM Solicitors, on 31 August 2010 the First Respondent emailed TS attaching two invoices from HUT in the sum of £66,093.25.

140.3 The First Respondent submitted that the emails were being read out of context. TS was not aware of the First Respondent's background in IT, and so would not have considered the provision of IT consultancy as a "sensible and practical solution to the loan requirement". The options were suggestions as to how the money could be transferred, that was either as payment for consultancy work, investment in the Respondents' hotel or a personal loan. ATM was not well structured in terms of its IT. The First Respondent researched cloud computing, which was fairly new at that time. Cloud computing provided ATM with the opportunity to streamline its IT and cut costs. The First Respondent and TS came to a commercial arrangement whereby TS employed the First Respondent for consultancy work, and the First Respondent used those payments as start-up capital. The First Respondent further submitted that he had no reason, as an independent contractor, to attempt to hide a transaction from the SRA.

140.4 The Tribunal noted that in his interview with the SRA, the First Respondent, whilst initially stating that he had only worked for MFL and Rohrer (previously Bracewell), had explained that he had conducted some consultancy work for ATM. Whilst he did not connect the work undertaken with the invoices during his interview, the Tribunal accepted that during the interview the First Respondent was "feeling under pressure and highly intimidated by the way the question and answer session was unfolding."

140.5 The Tribunal accepted the First Respondent's evidence that he had carried out consultancy work for ATM. He had confirmed in his interview that he had worked for that firm, and stated again in his evidence before the Tribunal that he had undertaken IT work for the firm. Given those findings, the Tribunal did not find that the invoices had been falsely prepared. Consequently, the Tribunal did not find that the First Respondent had attempted to mislead the SRA. Accordingly, the Tribunal dismissed allegation 1.9 and the correlating allegation of dishonesty.

Previous Disciplinary Matters

141. None against either Respondent.

Mitigation

142. The First Respondent explained that the Respondents had, at all times, endeavoured to act in good faith. Their experiences since the collapse of the fund had been horrendous, but they were now able to move on with their lives. They had done their best in terms of trying to address matters so as to ensure that a hearing would not be necessary, by informing the Applicant that they were prepared to be made the subject of Section 43 Orders. The Respondent thanked the Tribunal for allowing him to put the Respondents' version of events forward and into context.

Sanction

143. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition – December 2016). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

144. The Tribunal found the Respondents to be equally culpable. They were motivated by financial gain for themselves, to the detriment of the firm and the Fund. Their actions were planned and they had direct control of the circumstances. It was the Second Respondent who had authorised the payment of their invoices, and had continued to do so despite her knowledge of the collapse of the fund and the nature of the monies used to satisfy any invoices. Their conduct had caused harm to the reputation of the profession and to the Fund; none of the Axiom monies used by the firm and the Respondents had been repaid, and thus the Fund had suffered a significant financial loss. The Respondents conduct was aggravated by their proven dishonesty which was deliberate and repeated and had continued over a period of 22 months. In mitigation, the Respondents had complied with the Applicant's investigation, and had had no previous appearances before the Tribunal.

145. Given the seriousness of the allegations and the findings of dishonesty, the Tribunal determined that the Respondents should not work within the profession without first obtaining the permission of the Applicant. Accordingly, it was appropriate and proportionate to make orders restricting the employment of the Respondents under Section 43 of the Solicitors Act 1974.

146. The Tribunal also determined that the Respondents' serious and dishonest conduct merited a disciplinary sanction in addition to the regulation imposed by the Section 43 Order. As the Respondents were unadmitted, the Tribunal's options in terms of sanction were limited. The Tribunal considered that a financial penalty in the sum of £10,000 each, was both appropriate and proportionate taking into account the Respondents' misconduct and their means.

Costs

147. Mr Havard applied for costs in the sum of £27,132.22, as per the Applicant's costs schedule.

148. The First Respondent made no submissions as to quantum. The Respondents had submitted a statement of means, which showed that they had very little income, but had equity in their marital home. He explained that they were in financial difficulties with an overdraft and outstanding loan payments. They were only just surviving with assistance from their children and friends, and were struggling to "keep their heads above water". Given his age, the First Respondent was finding it difficult to obtain work, and he described their financial position as serious.

149. The Tribunal considered the costs schedule in detail, and determined that the costs claimed were reasonable and proportionate. The matters had been properly brought and found proved in full. The Tribunal determined that an order for costs in the full amount was appropriate in the circumstances. Given the nature of the Respondents' relationship, the Tribunal did not deem it to be appropriate to make separate costs orders, and accordingly ordered that the Respondents pay the costs claimed in full on a joint and several basis.

Statement of Full Order

150. The Tribunal Ordered that as from 8 February 2017 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor ALAN GEORGE HUTSON;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Alan George Hutson
(iii) no recognised body shall employ or remunerate the said Alan George Hutson;
(iv) no manager or employee of a recognised body shall employ or remunerate the said Alan George Hutson in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said Alan George Hutson to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said Alan George Hutson to have an interest in the body;

And the Tribunal further Ordered that the said Alan George Hutson do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and do pay the costs of and incidental to this application and enquiry jointly and severally with Rachel Mary Hutson fixed in the sum of £27,132.22.

151. The Tribunal Ordered that as from 8 February 2017 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor RACHEL MARY HUTSON;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Rachel Mary Hutson
(iii) no recognised body shall employ or remunerate the said Rachel Mary Hutson;
(iv) no manager or employee of a recognised body shall employ or remunerate the said Rachel Mary Hutson in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said Rachel Mary Hutson to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said Rachel Mary Hutson to have an interest in the body;

And the Tribunal further Ordered that the said Rachel Mary Hutson do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and do pay the costs of and incidental to this application and enquiry jointly and severally with Alan George Hutson fixed in the sum of £27,132.22.

Dated this 24th day of March 2017
On behalf of the Tribunal

J. P. Davies
Chairman

Judgment filed
with the Law Society
on 28 MAR 2017